

BOARD OF ZONING APPEALS

Minutes

August 28, 2001

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on August 28, 2001, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: JOHN ROGERS, BICKLEY FOSTER, FLOYD PITTS, BRADLEY TIDEMANN, JAMES SKELTON, and JAMES RUANE. The following Board member was absent: RANDY PHILLIPS.

The following Planning Department staff members were present: DALE MILLER, Secretary, SCOTT KNEBEL Assistant Secretary, Recording Secretary, ROSE M. SIMMERING.

Also present: SHARON DICKGRAFE – Assistant City Attorney.

Also present: J. R. COX – Commercial Plan Review/Commercial Zoning -- Office of Central Inspection.

PITTS: Calls BZA meeting to order. I am going to ask the Secretary to call the role, please.

SIMMERING: Completes role call.

PITTS: We do have a quorum so we will get right into Item #1. Approve BZA meeting minutes for May 22, 2001. Has everyone had an opportunity to read these? I was not present.

RUANE moves ROGERS seconds to the approval the meeting minutes of May 22, 2001.

FOSTER: Mr. Chairman put me down as abstaining I was not even on the Board at that time so I can't very well vote.

PITTS: Secretary please note, Mr. Bickley Foster abstaining.

MOTION CARRIES 5-0-1 FOSTER abstaining.

PITTS: Item #2 nomination and election of President and 1st Vice President. Here before we have always had a 2nd Vice President. Having read through the new proposed Bylaws we are going to not fulfill that position Dale?

DICKGRAFE: In that respect these Bylaws have not been changed. There was always a 2nd Vice Chair or Vice President since I have been on the Board and frankly the old Bylaws did not provide for one.

PITTS: I think perhaps that is appropriate. So we will unless it is determined at some later date that is an absolute necessity as of this meeting we will only elect a new President or new Chair and Vice Chair. Here before I do not even recall how we have done that. How do we ballot, Dale do you know?

MILLER: Essentially someone makes a motion and then if there are no other motions it is generally happened by acclamation as I recall.

PITTS: I would like to state that the current Chair is not a candidate for succeeding itself. Having said that we will open up the floor for nomination for, we will do it in order for Chairman and after that business has been done away with will vote for Vice Chairman. So the Chair will now entertain a motion.

ROGERS: Mr. Chairman, I would like to nominate Mr. James Ruane for the President of the BZA.

PITTS: James Ruane has been nominated. Is there another? Is there another? Chair moves that the nomination be closed by acclamation or do you want to vote on it? We will go ahead and call for the vote.

MOTION CARRIES 6-0 Mr. James Ruane is President of the BZA.

PITTS: I am going to go ahead and go through the Vice Chair and then pass the gavel. So nominations are in order for the first Vice Chair.

TIDEMANN: Moves to elect John Rogers as the 1st Vice Chair.

ROGERS: Thank you Bradley. I would have to decline at this time. We are not sure, I have served 2 four year terms, what my current statues on the Board will be, so I feel that it is the best interest for the Board that I decline Thank you.

PITTS: We might need to talk to legal about that. He was appointed to fulfill someone else's spot so he has not been here for 8 years.

DICKGRAFE: I would need to look at the general ordinances and I don't have those with me today. But I am sure that Dale and I will get together on that issue to determine whether or not that he can do another 4 years or what the ordinances actually provide because I didn't bring anything but just the general Board ordinances with me today.

PITTS: If we are not sure we will accept John declining as in order.

RUANE: Is the term 1 year or 4 years?

PITTS: Four.

RUANE: These elected positions?

DICKGRAFE: For the President and Vice President, it is one year. Your appointment to the Board is four years.

RUANE: I understand.

PITTS: Appointments to the Board is only 2 years now.

DICKGRAFE: I am sorry that is correct.

PITTS: This list that was sent out is somewhat in error because my term does not expire in June of 2005 but June of 2003. Alright, John I guess the Chair will have to declare that your declining is acceptable.

FOSTER: Mine goes to 2005, which is four years. So I think it is four years.

PITTS: I was just looking at something that somebody sent me out that said appointments would only be for two years now. Maybe they had made your appointment prior to your receiving that.

FOSTER: I think it is the appointment of the Council member for that term. I think it is their term of office. I think that is 4 years.

PITTS: That is actually not germane to the floor being opened up for nomination of the 2nd Vice President.

TIDEMANN moves to nominated James Skelton.

PITTS: Is there another? Chair moves that all nominations be closed.

MOTION CARRIES 6-0. James B. Skelton 2nd Vice President.

PITTS: I am going to pass this around.

RUANE: This is effective immediately?

FOSTER: Yes, if not sooner.

(LAUGHTER)

RUANE: What is our next Item on the Agenda while we are playing musical chairs? Will the Secretary call the next Item on the Agenda for the record?

SIMMERING: BZA2001-00040.

SCOTT KNEBEL (PLANNING STAFF): Good afternoon. The next item on the Agenda is a variance request to increase the height of a building sign on some property that is zoned Limited Commercial, which is located south of 32nd Street North and east of Rock Road.

The applicant indicates that the vacant Northrock VI movie theatre that is located on this property is going to be razed and then a 73,000 square foot retail center will be constructed in its place. That retail center will include a 45,000 square

foot Dick's Sporting Goods store. The applicant is requesting to build a 43 foot high building sign on this particular store. The applicant indicates that this sign is requested due to the fact that the store is located or will be located behind existing commercial buildings set along the Rock Road frontage.

The property, as I mentioned previously, is zoned Limited Commercial, as you can see here on the zoning map. That particular zoning district restricts the height of building signs to no more than 30 feet in height. Therefore, the applicant has requested this variance to permit the 43-foot high sign.

This is an aerial of the site. You can see that it is developed with the Northrock VI movie theatre today. This is the proposed front elevation of the store with the sign that the applicant has requested. This is the site plan and you have a copy of this, which I think is easier to see than what is on the screen here. Dick's Sporting Goods would be located approximately in this location, with the remainder of the retail center located north of that location. As far as the site, this shows the existing conditions on the site. There is parking not shown in this particular picture or the retail buildings to the left and to the right that are located in front of the site. This is the existing theater. The strip center would be located approximately in this location here. These are the buildings on the south side of the entrance to the center that are located in front of the proposed Sporting Goods store. This is the Dairy Queen restaurant that is also located in front of the store. This is the existing condition on Rock Road including all of the lunchtime traffic that exists there everyday. As you can see it is a mixture of retail and restaurant primarily. Quite a few, in fact just right across the street a shopping center with out parcels located on the east side of the street as well. This is the property located north of the proposed retail center and sporting goods store. It is developed with office uses. This is looking to the northeast and it is not a good picture by there is a retail center back here that contains a restaurant and several retail business and then additional office space. Then this is the bowling alley and then the Northrock 14 theater which are located south and southeast of the proposed site.

As far as the conditions needing to meet to grant a variance in this circumstance, staff has found, number one, that the request for the property is not unique. The property is proposed to be developed with a "big box" retail business and that it is not unique for this particular property or any other property in the community for the "big box" retail businesses to have out parcels developed with restaurant or other retail centers in front of them. In fact it is quite common. It is probably the most common commercial development pattern since the large malls were stopped 10 or 15 years ago.

In conditions like this, the sign code permits that ground mounted signage be allowed to indicate the location of the businesses back behind the developed out parcels. In this case there is an existing ground mounted sign that the applicant indicates they will be using to indicate the location of the Sporting Goods store.

As far as the impact of the adjacent property, staff finds that the adjacent properties will be adversely impacted. There are several competing sporting goods stores and stores that sell sporting goods in the area that do conform to the

current sign code and don't have the additional advantage of having a large, very tall sign to indicate their location. Those businesses would be adversely impacted by permitting a larger signage for this particular use.

As far as the hardship on the applicant, other "big box" retailers have managed to develop a sign package for their buildings that confirms to the 30-foot height restriction for their signage. It is the opinion of staff that Dick's Sporting Goods could come up with a similar design for their signage that would also meet this height restriction. Simply making the sign smaller than what is proposed rather than putting it all on top of the building, bringing it down so that it is on the façade of the building in this location here rather than up in here.

The public interest we feel would be adversely impacted as well. In this particular instance the building is 27 feet tall, and the sign is 16 feet above that. It is essentially being called a building sign, but it is essentially a roof sign or a sign with the exception of a foot or two of the signage is located entirely above the top of the roofline of the building. It is not uncommon to have architectural features that denote the location of the entrance to a building by having a taller parapet over the top of the entrance. However in this case this is essentially, and the opinion of staff, a billboard on top of a building with 9-foot high letters and a 16-foot high sign that we think would lead to an unsightly and cluttered development look that is unlike anything else that is in this particular area.

The spirit and intent of the Sign Code, planning staff feels that the intent of the Sign Code for parcels that have developed out parcels is to use a ground mounted signage out on the street frontage to identify the location of the business that is back behind the out parcels. In this case that is possible, and we feel that meets the spirit and intent of the Code. The intent is to limit the signage to 30-feet and is certainly not to permit signage that would be totally above the location in this Limited Commercial district.

The applicant did in their letter mention several examples of why they think that their request meets the intent of the Sign Code. Basically, giving examples of other areas where variances have been granted or other signs that have been permitted that are similar or supposedly similar to these. Two of those are Capitol Federal and Raytheon office buildings. Planning staff does not feel like either one of those are similar to this. Both of those are multi-story office buildings rather than a single-story building like this. In addition the Capitol Federal office building was limited to 2-foot 8-inch high letters rather than the 9-foot high letters that are requested in this instance. The Raytheon sign was permitted 108-square feet rather than the 394 square feet requested in this particular circumstance. The other that is probably more similar to this is the Best Buy along west Kellogg, where they have a similar type entry feature with the signage above the top. That particular property is zoned General Commercial. There is not any variance that was granted to allow that sign, and that zoning district is more intense than the zoning district that this property is located in and does not have that same 30-foot high building sign restriction.

Based on these findings, staff recommends that the request for a variance to permit a 43-foot high building sign be DENIED. With that I will answer any

questions that you might have.

RUANE: Does the Board have any questions for staff with regard to this matter?

TIDEMANN: Is there a height restriction on the building size?

KNEBEL: The height of the building would be permitted to be 45-feet by the Community Unit Plan. The Limited Commercial district actually permits 80-feet, but the CUP restricts it to 45-feet in this instance.

RUANE: Any questions from my left? Bickley?

FOSTER: Tell me more about roof signs, how high can they be? Tell me more about that regulation.

KNEBEL: I don't know. I have to look here in the Sign Code as far as the maximum height of a roof sign.

MILLER: Roof signs are not permitted.

KNEBEL: Does it not allow a roof sign at all?

FOSTER: So, roof signs are not permitted?

MILLER: Right.

FOSTER: You would define this as a roof sign?

MILLER: I think the argument he is making is that given the location that it is on the façade it acts just like a roof sign. It is all above the top line of the façade of the front wall.

KNEBEL: I don't believe that the Zoning Administrator has determined that this is a roof sign. I think they have determined that it is a wall sign that doesn't comply with the height restriction. My point was that it has the same impact as being a roof sign visually.

RUANE: Scott can you go back to your second slide?

KNEBEL: Of the site itself?

RUANE: I will know it when I see it. The question I am going to ask Scott, I am also going to ask the applicant to respond to as well.

KNEBEL: That is all the slides I have there.

RUANE: Is that the first one you showed?

KNEBEL: Or perhaps the aerial was the one?

RUANE: Yes, the aerial. That is the one I want. Looking at this slide, in your professional opinion evaluate the hardship on the applicant of limiting this to a 30- foot sign particularly by showing, diagramming for us or indicating for us, the line of sight from both K-96 and from Rock Road. Comparing the advantage to be gained by 30-foot height compared to 43-foot height in terms of the field of vision or view ability of the sign.

KNEBEL: The height of these buildings here are probably such that, were you to be driving along Rock Road, perhaps you could glance through here and see a 30-foot sign. You probably could. Same with coming in this direction. You could probably glance through here and see that, but more than likely you are going to see the ground-mounted signage right here in this location, which will indicate to you that Dick's Sporting Goods is back here. As far as being along K-96 obviously, I think that either sign 30-feet or 43-feet if you are traveling west bound you are not going to be able to see anything but the back of the sign in the back of the building. In fact, it is probably not likely that you are going to be looking this far field of view, but perhaps you could be if you were driving this way wanting to find where the Dick's Sporting Goods is that you know is somewhere in this location you might be looking all the way over here. As far as east bound, you are probably going to have to be taking the Rock Road exit, and the same thing maybe true for west bound. You may have already taken the exit, so you can see it anyway. But from this exit, at the top of it, you probably would see, probably just see barely, the top of it you can see the top of this building here now which is probably about 30-feet tall from this exit here.

RUANE: Now, did you take that line of sight analysis into account in reaching your conclusion with regard to hardship on the applicant?

KNEBEL: Well, as far as the hardship of the Code, the hardship is that the applicant could not design a sign that meets the Code, and we don't think that is accurate. We think a 30-foot tall sign could be designed and placed on this building without any undo hardship as far as expense or design of the building.

RUANE: The last question is, in the applicants submittal the statement is, "The requested variance is absolutely necessary in order for the applicant to operate a successful business". Do you agree or disagree with that statement?

KNEBEL: I find it hard to believe that all of these other businesses along here that have been successful have been successful despite the fact that they didn't have 43-foot tall signs. I think there are a lot of other ways for businesses to make it known where they are located rather than placing tall signage on top of their building.

RUANE: Thank you Scott. Anyone else have questions? Now we will hear from the applicant.

KIM EDGINGTON, AUSTIN MILLER, 355 N WACO, SUITE 200 WICHITA, KS 67202 representing the applicant: I believe you have some information before you and I just want it to let it be known for the record that I have contacted several members of the BZA Board to ask if they had any

questions regarding this case.

The first issue that I would like to address is the uniqueness of this property. This property is fairly uncommon in that it is a developed parcel that is proposed to be re-developed. This is a significant change in the type of use for this parcel, a conversion of use. In the past, this type of retail establishment would likely go into a property that is zoned General Commercial. As Scott addressed there are many of these in the City that are located in General Commercial districts, "big box" retailers, they are allowed higher signage simply by virtue of being within that General Commercial zoning. So that is why we are here today to adjust the use of this particular property is proposed to be very similar to many that you will find throughout the City, Home Depot, Lowe's, Circuit City, Best Buy. Many of those are all located in General Commercial Zoning so they do have the fortunate circumstance of being allowed taller signage at those locations. So although the zoning district itself doesn't allow the signs to be higher than 30 feet there are other establishments that are going to be similar that will. There are signs we have measured throughout the City at 35, 38, 40 feet, so this property is unique because it is not zoned "GC" for a use that typically would be zoned "GC". So that is why we are here today, rather than going through the exercise of amending the Community Unit Plan to allow General Commercial zoning, we feel it is in the best interest just to make this minor sign adjustment.

There are no direct competitors of Dick's Sporting Goods nearby, a large sporting goods retailer such as this is not found today in the City of Wichita. We have contacted several of the adjacent property owners none of which have registered any displeasure to this proposed request. In fact, many comments are that additional commercial activity brought to the Rock Road corridor is going to only benefit them and all the other retailers.

Addressing your comment about the necessity of the sign at this location, Dick's Sporting Goods is located throughout the Midwest. They have stores in Kansas City and Topeka, this is a proto-type building and through thousands of dollars of market study they have gone through many exercises and this is deemed to be the optimum storefront at the optimum height. We submitted some line of sight studies to you and I also submitted them to Scott in an electronic form and expected that they might be part of the presentation, I apologize that they are not. Our main concern was a line of sight from the eastbound exit ramp of K-96. This building in its current situation does not have visibility from that exit ramp. This is a business that is highly dependent on visibility and bringing traffic in, in order for its success. The studies have found that Dick's Sporting Goods needs a location such as north Rock Road with the traffic and with the market area there are unfortunately very few undeveloped parcels along north Rock Road, so the options are fairly limited as far as this is concerned.

Regarding the built up façade of this store front again, all of those other retailers that I mentioned Circuit City, Office Max, Office Depot, Best Buy, Home Depot, Lowe's, they all have built up facades to place specifically for the purposes of placement of signs, so this is not uncommon whatsoever from what is found throughout the City. We are not requesting a larger sign then what is allowed. We are merely asking that the height of the sign be in conformance with the height of

the building that is allowed at this site. I would be happy to entertain any questions. I have Christian Ablah from Classic Real Estate, who is the broker of the property, and he will address you after me and we will be glad to answer any other questions that you might have.

RUANE: Does the Board have any questions for the applicant? Bickley.

FOSTER: Will you have additional signs on either side to take care of the additional two businesses proposed?

EDGINGTON: Right, we still have additional building sign allotment that will be used by the tenants within the property.

FOSTER: They will be on the building? Roof signs or what?

EDGINGTON: They will be on the building we are not proposing any roof signs. We are allowed up to 20% of the building elevation to be used for wall signage and that is per the Zoning Code.

RUANE: What other questions would the Board have?

TIDEMANN: Are you asking to increase those sign heights as well?

EDGINGTON: No. Just this one at Dick's. The others will be in conformance with the Community Unit Plan provisions and the Zoning Code.

RUANE: Thank you very much.

CLASSIC REAL ESTATE INC., %CHRISTIAN ABLAH, 8200 E. 32nd St. N. Suite 150, Wichita, KS 67226: I just wanted to add to what Kim said that it is within the C.U.P. What Dick's could have come and done was applied for a building that was 45 feet high throughout, and they did not do that. I think Kim covered everything else I just want to re-iterate that we are within the C.U.P. building height, and that it is the sign variance that we are looking to increase a few feet.

SKELTON: So it is your belief that if this variance is not past that Dick's will choose to located elsewhere?

ABLAH: Could be, I have no reason not to think that. I think that is correct from what they told me. I am not them. I don't know, but it is imperative. I have made attempts to contact most of the BZA and just wanted to say that it is something that is imperative that they get is what I understand.

RUANE: Christian, I want you to use that same slide that Scott used, and Scott will you let him use that laser pointer or electric pointer that is up there. Utilizing only line of sight analysis, address the issue of hardship on Dick's, 30-foot sign versus 43-foot sign.

ABLAH: Scott can I talk you into going back to this one slide?

RUANE: No, answer it with the use of the same slide staff did.

ABLAH: I am happy to do that but in addition I would like to show the other one if I may. With your visibility from K-96, I have driven it several times. I drove it with 4 other people from Pittsburgh with Dick's Sporting Goods, and they do not feel that they have or one can see this building but how good is it that is something that is somewhat subjective and in their opinion it just does not do it. It is kind of like proto-typical, as Kim alluded to, building size must be 45,000 square feet. Smaller markets they will do 30,000 square feet. We do our proto-type that is nothing else it is that mentality of some of these larger retailers in their 110 stores that they have throughout the country. This is what we have. This is the standard that we have studied to death, and when we go into municipalities, this is what we want to have, a 45,000 square foot building.

TAPE CHANGE

RUANE: What is the difference between a 30-foot and a 43-foot high sign? What is your opinion?

ABLAH: My opinion is that there is a very large difference from hearing the retailers and understanding their mentality to give you my professional opinion of what I believe from listening to them. It is all the difference in the world to the retailer. You and I might say what is 10-feet or what is 12-feet, but in their minds when they see number of locations and they see what it does and it is that impulse and that is where they are at, that is where they are it is imperative that it would be 43 feet high.

RUANE: Can you show me the different line of sight from K-96 the difference between a 43-foot high sign and 30-foot high sign in terms of the field of vision or the line of sight?

ABLAH: Can I show you that?

RUANE: Utilizing this diagram?

ABLAH: I would say when you are driving at about this point here you cannot see this building until you are about, this is hard to see, but if this is Woodlawn here, when you are about $\frac{3}{4}$ of the way really about probably about $\frac{3}{4}$ of a mile from Woodlawn a $\frac{1}{4}$ of a mile from Rock Road at that point you can see that maybe you are a half a mile that you would be able to see the site. Does that answer your question?

RUANE: Not even close, 43-feet compared to 30-feet, visibility from K-96. On K-96 with the laser pointer show me where the field of vision is for a 43-foot tall sign as compared to that point with a 30 foot.

ABLAH: I would say a $\frac{1}{4}$ mile versus $\frac{1}{2}$ mile from K-96. Does that not answer the question still yet?

RUANE: Can you show me? Can you give me an idea what a ¼ mile versus ½ is?

ABLAH: I would say a ¼ is about here. If this is Woodlawn, then I would say this is the ½ mile. This is ¼ mile. This is really subjective and really hard to answer your question, and I am not professing to be an expert.

RUANE: I am trying to make it as objective as possible. So it is the applicant's position that a sign that can't be seen ½ mile away is an undue hardship?

EDGINGTON: Can I address this? What I am referring to is in your packet now is a photograph that was a study done by a local sign company. I apologize the quality of the photograph is not the best or the photocopy.

RUANE: I would welcome that you pass that around because it really did not reproduce well at all.

EDGINGTON: I will just go ahead and start it around.

ABLAH: Can we move to another slide? I want to show another picture.

EDGINGTON: What you will see on this photograph it directly addresses the issue of this line of sight visibility from K-96.

ABLAH: Scott can you help us with this slide?

EDGINGTON: The off ramp here with the sign height at 30-feet, this line of sight from the off ramp to the sign at 30-feet the sign is not visible. Our goal at 43 feet that sign becomes visible from the off ramp with this line of sight. You see at this point we have three intervening buildings that are in the line of sight view and that in essence is the main goal of this request.

SKELTON: On that note, how high is this right here that we are looking at with this photograph? Do you know that information?

EDGINGTON: The sign height?

SKELTON: Right here what is the current height of this structure as we see it in this photo?

EDGINGTON: Of the theater building? It is 30-feet today as it sits there. As I mentioned, there will be other signage. We are allowed building signage on the north side of the building. We feel that addresses the needs of line of sight from the west bound K-96, so this is specifically geared towards this line of sight from K-96 and also from the traveling Rock Road. These buildings in front of the theater are approximately 25 to 30 feet high. There are several intervening buildings where only glimpses of the Dick's Sporting Goods can be seen, so this in essence reduces some of the confusion of where the Dick's Sporting Goods store is. The sign will be an indicator of that. There is an existing ground sign here. We don't propose any changes or enlargements to that sign.

RUANE: Any questions for either Christian or Kim? I am going to give Christian the opportunity to go to whatever slides he want to.

ABLAH: The color picture. That is a pretty good example of what you can or cannot see of the existing building or of the signage as you see it from Rock Road. Right at the main entrance is where you are right there.

FOSTER: If you look at it like that can't you see a 30-foot sign as well as a 43 foot sign from that view?

ABLAH: No.

FOSTER: Looking right straight down the line like that?

ABLAH: Yes, for about 5 feet for maybe an eighth of a second when you are driving 35 miles an hour. If you are really looking, and you are really that conscious. I feel that I have stated or tried to state the opinion of where they are at, I just think that is just my opinion.

FOSTER: It was pointed out that you are not talking about trying to see a sign at 65 miles an hour going over an interchange in height. I haven't heard you say that, so that is not the issue here right? You are talking about getting off the off-ramp to see this. Is that what I am hearing?

ABLAH: I think Kim corrected and stated it much better then I was even attempting to. With her conversations that Kim has had with the signage people, about that as opposed to what I had said early.

FOSTER: All I am hearing is that we are talking about on the off-ramp. First of all if we are going to get off an off-ramp, aren't they looking for it anyway? Are they going to be looking for signs getting off an off-ramp? Is that the only chance that you have to attract these people at 43-feet?

EDGINGTON: Well, a business such as this is highly dependent on drive-by traffic. It may not be what we term a "destination stop", so especially being new on the market there is a need to attract drive-by traffic both from the K-96 Expressway and from Rock Road.

FOSTER: And you are saying that the only place from the road would be from the exit ramp?

EDGINGTON: Well, that is a key point that we require the visibility. A key place where that visibility is required. Again as travelers are going along Rock Road at the 43-feet allows the sign to be seen beyond the intervening buildings.

FOSTER: Giving the backup of traffic there, I assure you they will have a lot of time to look at that sign.

EDGINGTON: We are fixing that.

RUANE: Noting that we are running behind schedule, unless there is a particular question you would like to ask of the applicant, I would like the other gentlemen who wishes to speak, be given his opportunity.

ROGERS: One question please. Am I correct that the location of this sign would be approximately the southwest corner of the existing building?

EDGINGTON: Right.

ROGERS: It is not going to be a straight shot down this drive? It is going to be over to our right?

EDGINGTON: You are correct based on the submitted site plan.

PITTS: Would you not also intend to utilize the existing ground mounted signage that is right to the south of that entry there?

EDGINGTON: Right, we do intend to use that. We are not proposing any changes to the ground mounted signage, no enlargements, nothing at all to that.

RUANE: Thank you very much. Sir if you will please give us your name and address for the record before you begin.

JIM DAKE, 205 Pineview Drive, Andover, KS: I am currently the District Advisor for Dickinson Theaters who runs this theater at this point. I wanted to bring up a point where they were trying to show, I need to go back to the aerial photo.

RUANE: While he is doing that are the theaters open?

DAKE: The Theater is open right now.

PITTS: Mr. Chairman, is this gentlemen speaking in favor of or opposition to the signage?

DAKE: I want you to understand that I am not saying whether that 30 foot sign versus that 43 foot sign you are asking specific questions whether that site can be seen from certain directions. I wanted to give you my opinion.

RUANE: As a Citizen?

DAKE: As a Citizen. When you are coming down Rock Road, this building right here obstructs this here building. There is also an embankment that goes up here about 15 feet where you can't see across. The only time that you can see the top of the building, which is that structure at the top, is when you get over here to this point, when you are about ready to go off. That is the only time that you can see the building. Over here is when you come down this off-ramp here you can see this top piece here where we used to have flags and things like that. The only time that you can see that really clear is at night when we have all the lights on

that does the reflection. That is the only part of the building you can see at that point. Then when you pull off of K-96 and come this way, all these buildings right here to 32nd obstruct this vision. You cannot see the building, so the only time you get a good glimpse of the building is when you reach this point or when you are directly in front of the building. Everything else obstructs the view. I don't know whether the 30-foot sign versus the 43-foot sign would be any good. I don't know. Like Kim was saying there is about 28 feet high building right in front of it.

RUANE: Thank you. You are in a really competitive business. That is big chains that you never thought could be in bankruptcy and are, theaters are closing up and down Rock Road. How have you managed to stay open with such poor visibility?

DAKE: Ours advertising. We do a lot of paper, radio. That particular location I have to say especially with the Northrock 14 is the Northrock VI is not doing the business that you would think that it would be but the Northrock 14 is. People just know that we are there, and they come for the product, and we try to keep our establishment clean. I just wanted you to understand that there is blockage there where these signs are almost imperative. I would like to have a Marquee but they will not allow us to have one.

RUANE: Point taken. Any other questions? Anyone else that would like to address the Board regarding this matter? Otherwise, we will limit the discussion to the Board. Any prior discussion or perhaps a motion?

FOSTER: Isn't this a case of you pay for what you get. You buy a site in back of a group of buildings like this, and you are that far away from an interstate. Is it our responsibility to get a sign high enough that can be seen in all directions? It has not been done for the other buildings in the area. Have we heard any evidence from the staff or the applicant about anybody else doing this to attract people from the interstate? Certainly the gentlemen that owns the theatre would have been an ideal one to do that if it was going to be done when they owned it as a theatre. I think that is an issue here when we talked about this. I think the staff has done a good job on there report here. I think each one of them can be justified. I went out I looked at this site carefully. I looked up and down that road there. You don't see that the companies in back have the big signs like Best Buy and all those others. That is the character of the area. Now, if we want to give them special privilege for them, it is not just a hardship I see it as a special privilege for them to locate there.

RUANE: The new Chair failed to discern a motion in those comments is there one?

PITTS: Same token, Bickley, since we are just conversing among the bench. I see no persons here in opposition none of the neighbors are opposing this.

FOSTER: Other businesses are the neighbors, I don't think they would. We have never had businesses show up.

SKELTON: The thing that I find important about this case is the development along north Rock Road. It all feeds on itself. I do believe that if this business were to go into this location it would spur further economic activity. It is off the road quite a bit. I think we should in my opinion try to accommodate Dick's Sporting Goods. It is curious to me why they have to have this sign. I would hate to see this variance denied and them go somewhere else. I don't know how possible it is at this point to see if they would be willing to try and change their sign a little bit or reduce the height or its size somehow before they make that decision to go or not go. I think that there is some indication in their comments that they say that they are going to locate somewhere else if this variance isn't passed.

FOSTER: In regard to that point, the sign, even though it shows it as being the logo or whatever call it, the measurement of it is 31 feet across this is a roof sign 52 feet wide.

SKELTON: You can't say roof sign, Bickley. It is not relevant.

PITTS: It is not a roof sign.

TIDEMANN: It is a sign.

RUANE: Let him finish his comments here.

FOSTER: I agree with staff that it acts like a roof sign. What would be the difference from a roof sign?

SKELTON: It is not on the roof.

PITTS: A roof sign would be sitting on the roof.

FOSTER: It is on the edge of the roof. It is above the roof. That is what a roof sign is, it is above the roof. Define a roof sign.

PITTS: I don't think that there is a definition out there in existence among the City, the powers that be enforcing these ordinances, that this would constitute a roof sign. Am I right or wrong?

RUANE: The chair will try to answer this question. We could not approve a roof sign through a variance request. Period.

DICKGRAFE: Yes, you could.

RUANE: Even though it is not allowed anywhere in the Zoning Code?

DICKGRAFE: The only way you can have a roof sign is to request a variance.

COX: Correct.

RUANE: Okay. Good point.

TIDEMANN: I have a statement. The hardship of this sign I do not see it affecting anybody as far as a negative and as well, if we are going to build a building 45 feet then why can't we have a sign 43?

SKELTON: There are no houses in the area, no residences at all being affected.

RUANE: In what area?

SKELTON: In this area, in the general vicinity.

RUANE: Dale did you have a point?

MILLER: The definition in the Sign Code for a roof sign is, "A sign erected upon or above the roof of a building or structure that does not meet the definition of a building sign".

PITTS: Upon or above?

MILLER: The majority of this sign is above the roofline. I would also remind Commissioners that neighborhood support or opposition is not the issue. The issue is that, if you grant this one, are you prepared to grant all others for all other businesses in this area that would ask the same thing? That is the issue that you should be evaluating, not neighborhood support or oppositions because that is not one of the factors.

SKELTON: Would it be a mistake for me to consider that if they are going to build a big sign there might be adjacent housing? But my point, Mr. Miller, is that there is no housing adjacent to this. There are no homeowners that are going to have their rights violated here. There are none here. That is my only point. I am not saying that there is or that there isn't because there is none it is a non-existent question here. My point is I am looking at there are no adjacent neighborhoods here.

MILLER: But that is an irrelevant question here.

SKELTON: That is a statement. It is relevant because if there was neighborhoods close to this structure, I would probably be more inclined to deny it that is from my position.

MILLER: I guess what I am trying to say to you is that the issue is not whether there are houses near there but whether or not you are prepared to consider, and if you approve this one, approve similar request for every other business in this situation along Rock Road.

SKELTON: Mr. Chairman, all I can say is that it would be tough for me to grant this variance for a building that is next to Rock Road. Because the setback isn't the same. The distance away from the road isn't the same. The obstructions between the road and the buildings are not the same. So I don't find that if this building was right up against Rock Road, like all the other businesses are in this area, I would be in favor of granting this variance as I am now.

RUANE: To decide on this issue we have had the benefit of some very good and well thought out presentations, and we have obtained answers to a lot of good discussion. But, as Chair, I am asking that we limit the discussion to the question that is before us, which is whether or not to approve a variance from 30-feet to 43-feet based upon the statutory requirements which we have, which are: uniqueness, adjacent property, hardship, public interest, and spirit and intent. If nobody else will make a motion can the Chair make a motion?

DICKGRAFE: Yes.

RUANE moves FOSTER seconds, that the Board accept the findings of fact as set forth in the Secretary's Report and that all five conditions set out in the section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found not to exist and that the variance be denied.

RUANE: All five conditions have to be met. Through our discussion and the applicant's presentation it appears the most pressing issue to consider is whether or not in particular the hardship conditions, has been met here.

FOSTER: I would like to second that and make a point.

RUANE: You have to second it first.

FOSTER: I second it. Discussion. We focused here on the hardship issue, and logically so, but it has to meet as you indicated Mr. Chairmen all five. To me it doesn't meet the unique issue. What is unique about this situation that everybody up and down Rock Road doesn't have the same problem in the backside. So I think that even if you want to change the hardship and say it isn't you still have unique and other factors that are going to need to be met.

RUANE: What other discussion do we have?

SKELTON: We have a motion and a second.

RUANE: If there is not further discussion then I will call the question.

MOTION to DENY the variance BZA 2001-00040 carried 4-2. (opposed Skelton and Tidemann).

RUANE: Thank you very much for your input. I welcome Dick's Sporting Goods to our community and I will be certain to shop there. Next issue is Agenda Item #4, DR 2001-00008 BZA Bylaw Amendments. I trust each member has been furnished with a copy of the proposed amendments and has had the opportunity to review them.

FOSTER: I kind of feel badly taking your time like this, and I will try to be as brief as possible. I didn't really intend to study this in detail, but something came up that made me thought I would look at it. I kind of wonder why I didn't look at

it more closely in the 4 ½ years that I served on it before. There are a lot of things that are missing from this thing. Lets talk about it. You were talking Mr. Chairman, about whether the Chairman could serve more than two years. I always thought that was in here. It is not here. It never has been in here, so it had been a custom we have had.

PITTS: That is a State statue.

FOSTER: No, it doesn't have anything to do with the State.

PITTS: That's where it is located at Bickley.

FOSTER: No.

DICKGRAFE: I think a lot of those are located in our specific ordinance, and what I might suggest if the Board has to save time, Bickley has given me a list of comments, most of which I agree with, and I can look at those comments, revise the Bylaws or provide to the Board perhaps not before the next meeting but at least for the October meeting references to where these items are whether they are in the State statue or whether they are in the City ordinances and then the Board can determine whether or not these items should be in the Bylaws. That would just be my suggestion.

RUANE: If the Bylaws provide for the Chair to serve a term for one year and do not prohibit that Chair from serving more than one term since they are silent on the number of terms doesn't that indicate that a two year, two back to back one year terms is correct?

DICKGRAFE: The Board is going to be governed by the City ordinances that also just deal with Boards in general. So we certainly can't have Bylaws or practices that are contrary to just the general ordinances that deal with Boards. So in response to your question, I think that is probably true that in practice you couldn't be Chair more than two years. Where that came from, Floyd thinks it is in the State statue, I believe that it is in the ordinances on just Boards in general.

PITTS: It has been a State statue since 1966.

RUANE: I don't remember what the source is, but I know that I had the great misfortune to work on a committee trying to revise the CPO bylaws and to somehow manage to map those in conformance with both State and City ordinances and it is a large process at best. Bickley, I guess the question to you is, would you prefer to make your comments now, or see the matter tabled for a revision to be made which would pinpoint whatever modifications or changes resulted from your input by some sort of red lining that we could understand from whom the suggestion came?

FOSTER: I would be glad to sit down with Counsel and go over this. There is one that I need to discuss to get your input if that would be forwarded to her. This is what and why I am even talking about it. As you know I served on your Board for 4 ½ years before. During that entire time only two people ever called me.

Nobody ever called to influence my opinion on that Board. They knew me. The only two that ever called was in regards to, Dale even remembers one of them because I was Chairman and had to do with timing whether we would have a special meeting, I think Bob Kaplan had a case, remember we had a problem on timing, it had nothing to do with the merits on the case.

Now there is nothing in here about this being a quasi-judicial hearing which has to be fair and impartial. In my opinion we are not suppose to, I had a call from Kim Edgington and from Christian Ablah, and I just simply told them that I don't appreciate outside input like that because that means I might know more than you all know or if you do that. I am not asking if anybody did it. I don't mind that fact that these were delivered to my house to look at. The staff could have done that. I am not offend by that. I just don't want that to start. I think we need something in our bylaws that talk about ex parte discussions are not appropriate in a quasi-judicial setting.

SKELTON: Couldn't that be like calling a judge at home saying I am going to be there for you? Same thing and it is improper and it is not ethical. It is illegal now?

DICKGRAFE: It is not appropriate to have ex parte because Bickley, is right, you are a quasi-judicial Board and when she said, "I have talked to some of you" I kind of went you are not suppose to be doing that, just in my mind. But, I agree those can either be things that are in the bylaws. Certainly in the State statue this is a quasi-judicial Board. That is clear, and I suppose that depends from a call from this Board how detailed they want the Bylaws to be. My concern with that, with having all of this in there, certainly the ex parte communications probably isn't going to change, but as you have changes in the State statues or even in the City's Ordinances you are going to have to constantly be looking at your bylaws to make sure that they are not in conflict with those. If you have a general rules and procedures type of bylaws, which, I think this Board has had for a long time, then I think it is much easier to flow along with that. Now, certainly Bickley's comments are well taken, and I don't have a problem putting those in the bylaws.

SKELTON: Are applicant's given a list of Board members and contact information?

MILLER: Not unless they ask for it.

SKELTON: If they ask for it are they given any kind of guidance about what is appropriate on calling people or not to call people? I think that might be some information that they could have if it really is not appropriate they might not know any better.

MILLER: What Rose is saying is that I think on our web site we put MAPC, BZA, CO-BZA, all of our Boards out there.

DICKGRAFE: I was going to say that all of that information is going to be a public record and going to open to the public. Now I think that your comment is well taken. Do we need to look at some kind of instruction sheet for applicants

that this is what you do, this is appropriate, if you have documentations to go to the Board, those need to go through staff so that we alleviate and frankly I don't know if staff had everything that you all had to consider. Maybe they do in this last case.

MILLER: No we don't.

KNEBEL: We don't have all of that information the Board received at their homes.

DICKGRAFE: But, from an appeals standpoint, and I anticipate that this may very well be appealed, staff needs to have everything that you are considering.

RUANE: Staff didn't get some of this?

DICKGRAFE: No.

FOSTER: See that is where I noticed it was 52 feet across. I didn't see it on the first set of materials. I would be glad to make a motion. I would comment that one of the other things that is not in here is about having closed sessions which we can legally have and which this Board has done and it is not even in our bylaws. So there are things missing.

FOSTER moves RUANE seconds, that this be tabled to next month for further input and that it include the statement in regard to ex parte input from applicants and the public. So you would not be voting to not only to table it but to indicate that as a desirable addition to the bylaws, the concept of instructing the members that this is not an appropriate thing.

RUANE: I understand the motion, will you accept a friendly amendment that we also reference the open meetings requirements in so far as that relates to ex parte input to provide guidance to this Board as well as to future applicants as to what our respective responsibilities are.

FOSTER: Very good amendment.

PITTS: Can we discuss the motion yet? We might want to look at this a little bit further or maybe give staff or legal some time to research this. I think we sit as a quasi-judicial Board on Appeals only.

DICKGRAFE: No.

PITTS: I am not correct?

DICKGRAFE: No, because if you were just a Board like anybody else in the City, your decision could be appealed to the City Council. By statute your decision is like a judge, and it is appealed to the District Court. So you are unlike most any other Board in the City in that if most Boards you come you ask the Board, they say no, you go to the Council. That doesn't happen because of the

State statues.

PITTS: I do not have any big problem with what you are saying because after 8 years this is the first time that an applicant has ever approached me directly. I didn't know that there was anything wrong with it. I thought they were approaching all of you guys and not me.

RUANE: Just to give you a difference of perspective, ever since I got on this Board, I have heard frequently from people in advance and I wasn't as eloquent as Bickley, but I said I will have an open-mind and I will not reach a decision until I hear the whole matter, and no I will not give any indication of what my opinion will be, and no you cannot count on my support. Whether I happen to agree with what they wanted or not as of that moment in time, and frankly, I would like to be able to say I can't talk to you, it would be far more graceful then presently being able to.

DICKGRAFE: Do we have something set for the September meeting?

KNEBEL: The one question that I have for the Board is that there is nothing at this point scheduled for the September meeting if we were to go with this motion that would be the only Item. We could do that or until October.

RUANE: Is the motion to table it to a date certain or to our next meeting?

KNEBEL: It could be at the next meeting if you want that.

FOSTER: Table to the next meeting.

PITTS: We could take care of it at the next meeting rather than meeting in September.

SKELTON: That would be a good idea.

FOSTER: Table to the next meeting.

DICKGRAFE: Which would be October.

FOSTER: Whenever.

KNEBEL: Whenever someone makes an application.

SKELTON: The September meeting or the October meeting?

RUANE: Now, a good request has been made to read back the motion as amended, and I want to make certain that the record reflects that the friendly amendment was accepted.

SIMMERING: I just have that Foster moved that we table the Bylaws until the next meeting, which would be in October because we are not having a meeting in September.

RUANE: Ok well, Rose, get that pen out, that was the first aspect of it and the second aspect was that we decide today that the Board is in favor of balancing the open meetings requirements with an express prohibition of ex parte communication with the Board.

SKELTON: I don't understand the motion.

RUANE: I am sorry, the motion is to table until October. Assign Sharon to consider Bickley's input. Voice our approval today that we would like the open meeting and ex parte aspects to be dealt with in the next round for consideration at the next meeting in October.

SKELTON: Bickley, what are your comments?

FOSTER: I am all in favor of that. Those are the two main points.

DICKGRAFE: So if I may so that the record is clear, Bickley's comments that were handed to me prior to the meeting, quasi-judicial hearing, ex parte communications, closed hearings, a general voting section, rather than just information about voting on a variance, which I think is good. We have certain items that we vote for moving hearing dates, not having a meeting, approving minutes, and really the only voting requirements in our bylaws talk about variances as opposed to generic actions of the Board. No notifications on appeals. Which he is right, we need to have that included in there to abstain with only a conflict of interest which I think is in there, and I can tweak the verbiage a little bit. The only other thing is ...

RUANE: One more thing? If it is a quick thing I will let you go ahead.

DICKGRAFE: Second Vice Chair, and I need to look to see whether the current City Ordinances allow for Second Vice Chairs on Boards. That is it.

RUANE: Thank you, but the only relevant part of that has to do with the only thing that is included in the motion that we are discussing now has to do with the open meetings law, tabling further work on some of the issues that Sharon is talking about, we are not asked to make any decision today with regard to those things and ex parte communication or open meetings which everyone I did not say.

PITTS: May I ask a question. It may be germane to the motion, we do know that we do not have any applicants to have any meeting in September. Do we know if we will have anything for October?

KNEBEL: We don't know that yet. The application period has not closed yet.

FOSTER: Wouldn't the motion be better until the next meeting then?

RUANE: I think that is how you originally made the motion but I think staff

understood that meant that maybe you want a September meeting to consider this tabled item only.

KNEBEL: We just were not sure.

FOSTER: We can say until the next meeting.

KNEBEL: We can do that.

RUANE: Any further, questions, or discussion, clarification? May we call the questions.

FOSTER moves RUANE seconds, to table DR2001-08 BZA Bylaw Amendments until the next meeting (October) Assign Sharon to consider Bickley's input. Voice our approval today that we would like the open meeting and ex parte aspects to be dealt with in the next round for consideration at the next meeting in October.

MOTION CARRIED 6-0.

RUANE: Next Agenda Item, Report from Central Inspection. J.R. Cox is this something you would mind tabling until the next meeting?

COX: No, that would be fine.

RUANE: What does anyone else think?

RUANE moves ROGERS seconds to table J.R. Cox's report until the next meeting given the lateness of the hour.

MOTION CARRIED 6-0.

RUANE: Do I need a motion to adjourn or do we just adjourn?

COX: Just adjourn.